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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,681	12/31/2003	Bryon Paul Day	KCX-1226 (19589)	2161
7590 Mr. Stephen E. Bondura Dority & Manning, P.A. P.O. Box 1449 Greenville, SC 29602			EXAMINER MULLIS, JEFFREY C	
			ART UNIT 1711	PAPER NUMBER
			MAIL DATE 07/24/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/749,681

**Applicant(s)**

DAY ET AL.

**Examiner**

Jeffrey C. Mullis

**Art Unit**

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on 02 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 33-50 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 33-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

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All previous rejections are hereby withdrawn in view of applicants amendment.

Claim 50 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 50 is unclear in that the test to which "first cycle hysteresis pertains is unstated and as this value would vary depending on the test performed the term first cycle hysteresis is ambiguous.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 33-40, 43-46 and 50 are rejected under 35 U.S.C. 102(a) as being anticipated by Vaughan (US 6,531,544).

Patentees disclose a composition for nonwoven bonding of disposable diapers (abstract) containing SBS and SIS triblock copolymers (column 3, lines 1-17) in which a first block copolymer has a MFR of less than 20 and a second one greater than 30

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having applicants MFR in combination (column 3, line 47-column 4, line 30). See Example 2 for a working example anticipating the claims.

Claims 41, 42 and 47-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vaughan, cited above in view of Morman (US 4,965,122) or Gillies (US 6,648,869) or Datta (US 5,665,186) or Morman (US 4,965,122; the secondary reference relied upon for claims 47-49).

Vaughan does not disclose nonwovens which are spun bonded or necked or corrugated and no examples exist of the specific combination of applicants claims 42 and 41.

Gillies disclose a diaper containing layers bound to each other in which one layer is corrugated to more effectively provide a barrier to waste liquid (abstract; claims 15 and 16).

Datta discloses an absorbent article with a corrugated layer in order to better conform to the shape of the wearer (abstract).

It would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention to provide a corrugated layer in the article of Vaughan in order to provide a better fit to the wearer or more effective absorption of liquids as taught by

Datta and Gillies absent any showing of surprising or unexpected results.

With re to claims 41 and 42 it would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention to arrive at applicants combination by selecting from the disclosures of Vaughan absent any showing of surprising or unexpected results.



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Morman at column 1, lines 35-38 discloses use of necking to improve stretch and recovery characteristic. Hence it would have been obvious to a practitioner having an ordinary skill in the art to neck the material of the primary reference in order to improve stretch and recovery as taught by Morman absent any showing of surprising or unexpected results.

Claims 33-40, 43, 44-46 and 50 are rejected under 35 U.S.C. 102(a) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Maris (US 2003/0125442).

Patentees disclose a composition having a block copolymer "a1" having a MFR of less than 20 and a second styrenic block copolymer "a2" (paragraphs 18 and 19). Note Table 1 containing compositions 2, 3 and 6 in paragraph 61 for use of combinations of STYROFLEX BX 6105 and KRATON G 1652 which is disclosed in paragraph 47 as "high" and "low" molecular weight styrenic triblock copolymers and as the MFR of Maris' "a1" encompasses applicants lowest flow rate material it would reasonably appear that the low molecular weight material of Maris would have an MFR higher than 20 and thus meet the limitation of the claims. Note the abstract for use as a layer.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis

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exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al., 619 F. 2d 67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Claims 412 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maris, cited above.

Maris does not disclose examples of the specific combination of applicants claims 42 and 41.

With re to claims 41 and 42 it would have been obvious to a practitioner having an ordinary skill in the art at the time of the invention to arrive at applicants combination by selecting from the disclosures of Maris absent any showing of surprising or unexpected results.

Claims 33,35, 37-40, 43-46 and 50 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Diehl (US 5,358,783).

Examples 1 and 4 of the patent disclose a composition having a combination of SIS with 40 MFR and another SIS with MFR such that MFR of the other SIS is lowered upon addition and therefore reasonably appears to have a MFR much lower than the first SIS and therefore in applicants range. Note claim 11 for use as a layer.

When the reference discloses all the limitations of a claim except a property or function, and the Examiner cannot determine whether or not the reference inherently possesses properties which anticipate or render obvious the claimed invention, basis

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exists for shifting the burden of proof to applicant. Note In re Fitzgerald et al. 619 F. 2d

67, 70, 205 USPQ 594, 596, (CCPA 1980). See MPEP § 2112-2112.02.

Any inquiry concerning this communication should be directed to Jeffrey C. Mullis  
at telephone number 571 272 1075.

Jeffrey C. Mullis  
Primary Examiner  
Art Unit 1711

JCM

7-17-07

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